

14SL-CC04270

Electronically Filed - St Louis County - December 15, 2014 - 12:48 PM

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
CIRCUIT JUDGE DIVISION

SARAH KENDRICK,

Plaintiff,

v.

WEST COUNTY MOTOR

COMPANY, INC. d/b/a

WEST COUNTY BMW,

Serve: Robert L. Striler

Registered Agent

825 Maryville Centre, Ste. 300

Chesterfield, MO 63017

Cause No.

Division

and

CHANCE EARNEST,

Serve: 14417 Manchester Road

Manchester, MO 63011

and

ORSON GUYTON,

Serve: 14417 Manchester Road

Manchester, MO 63011

Defendants.

PETITION FOR DAMAGES

COMES NOW Plaintiff and for her Petition for Damages states as follows:

COUNT I

**Violation of the Missouri Merchandising Practices Act
(\$407.020 RSMo. et seq. vs. Defendant West County Motor Company, Inc.)**

1. Plaintiff, Sarah L. Kendrick is a resident of St. Charles County, Missouri.
2. Defendant West County Motor Company, Inc. d/b/a West County BMW ("West County") is a Missouri Corporation with its principal place of business in St. Louis County, Missouri.
3. Defendant Chance Earnest at all times relevant was an employee of Defendant.



4. Defendant Orson Guyton at all times relevant was an employee of Defendant.

5. In February 2013, Plaintiff inquired, through the Defendant's website and through conversations with Defendant Earnest, about the cost and availability of a 2013 BMW Model X5.

6. On or about March 11, 2013, Defendant Earnest called Plaintiff and informed her that West County had obtained a 2013 BMW Model X5 which contained the options desired by Plaintiff. ("the Vehicle")

7. Plaintiff desired to test drive the Vehicle, and on March 12, 2013, went to West County BMW to drive the Vehicle.

8. On that date, Plaintiff took the vehicle for a test drive and thereafter, signed the Vehicle's Buyer Order ("the Order") attached hereto as "Exhibit 1."

9. Shortly after Plaintiff signed the Order, and while at the dealership, Plaintiff informed Defendant Earnest that she could not afford to purchase the Vehicle and instructed him to cancel the Order.

10. Plaintiff then left the dealership in her own vehicle.

11. At no time did Plaintiff pay any funds to Defendant for the purchase of the vehicle nor did she obtain financing for the same.

12. In June 2013, Plaintiff went to the Motor Vehicle Bureau of Missouri Department of Revenue ("the Department") to license a Sea Doo which was gifted to her by her father.

13. She was informed by an employee at the Department that the Sea Doo could not be licensed because she owed sales tax in excess of \$4000 in connection with her alleged purchase of the Vehicle. A copy of correspondence received by Plaintiff from the Department is attached hereto as "Exhibit 2," and reflects West County reported to the Department that the Vehicle was sold to Plaintiff on March 7, 2013, which was five (5) days prior to Plaintiff's visit to West County.

14. The employee also informed Plaintiff that the Vehicle had been purchased with a check from a bank located in the State of California.

15. Plaintiff subsequently obtained, through her complaint with the Better Business Bureau, a copy of the check drawn on East West Bank, ("the Bank") which was dated March 5, 2013 and which was seven (7) days prior to Defendant's visit to West County. This check was used to purchase the Vehicle from West County. A copy of this check is attached hereto as "Exhibit 3."

16. At no time did Plaintiff have a relationship with the Bank nor was she aware that the Bank was issuing a check to West County for the purchase of the Vehicle.

17. The Vehicle was, in fact, purchased from West County by a car dealership in the State of California.

18. Plaintiff has made demand upon Defendant to pay the sales tax that the Department claims is due and owing from her for the sale of the Vehicle but Defendant has refused.

19. As a result of Defendant's actions, Plaintiff has been damaged in that she cannot license any vehicles in her name without paying the sales tax and will not be able to renew the tags on the vehicle she owns when the same becomes due.

20. The actions of Defendant in reporting to the Department that Plaintiff purchased the Vehicle when she did not, and in seeking to have her held responsible for payment of the sales tax instead of the real purchaser of the Vehicle is deceptive, fraudulent and constitutes an unfair trade practice, and therefore constitutes a violation of the Merchandising Practices Act.

21. The actions of the Defendant are intentional, willful and malicious thereby justifying the imposition of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendant for actual damages, punitive damages, her attorney's fees incurred herein, and for such other and further relief as the Court deems just and proper.

COUNT II
(Civil Conspiracy vs. Defendants Earnest and Guyton)

22. Plaintiff realleges and incorporates Count I as if fully set forth herein.

23. Upon information and belief, Defendants Chance Earnest and Orson Guyton for reasons unknown, conspired to cause the Defendant West County BMW to report to the Missouri Department of Revenue that Plaintiff was the purchaser of the Vehicle.

24. The actions of Defendants Chance Earnest and Orson Guyton were unlawful.

25. As a result of the actions of the said Defendants, Plaintiff has been damaged, as is more fully set forth in Paragraph 19 herein.

WHEREFORE, Plaintiff prays for judgment against Defendants Earnest and Guyton for actual damages, punitive damages, her attorney's fees incurred herein, and for such other and further relief as the Court deems just and proper.

COUNT III
(Negligence vs. Defendant West County Motor Company, Inc.)

26. Plaintiff realleges and incorporates Count I and Count II as if fully set forth herein.

27. Defendant has a duty to all customers and prospective customers to provide true and accurate information to the Missouri Department of Revenue regarding the purchase of motor vehicles.

28. Defendant breached the said duty by falsely reporting to the Department of Revenue that Plaintiff purchased the Vehicle.

29. As a result of the said negligence, Plaintiff was damaged.

WHEREFORE, Plaintiff prays for judgment against Defendant West County BMW for actual damages, punitive damages, her attorney's fees incurred herein, and for such other and further relief as the Court deems just and proper.

COUNT IV

**Racketeering Influenced and Corrupt Organizations Claim Under 18 U.S.C. §1964
vs.**

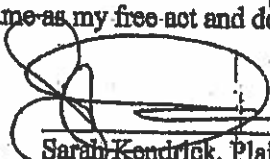
Defendants West County Motor Company, Inc., Earnest and Guyton

30. Plaintiff realleges and incorporates Counts I, II and II as if fully set forth herein.
31. That Chance Earnest and Orson Guyton and West County BMW are "persons" for 18 U.S.C. §1964.
32. That Plaintiff has standing to take action under 18 U.S.C. §1964.
33. That the Defendants Chance Earnest and Orson Guyton and West County BMW have engaged in a pattern of defrauding individuals of their funds and property by engaging in deceptive and fraudulent acts as alleged herein.
34. That Defendants and Chance Earnest and Orson Guyton and West County BMW's actions are in violation of 18 U.S.C. §1964.
35. Plaintiff seeks the damages set out in 18 U.S.C. §1964, including, but not limited to treble damages and attorney's fees.
36. That through the Defendants pattern of unlawful acts, Plaintiff has suffered and continues to suffer economic loss in amount as alleged herein.

WHEREFORE, Plaintiff prays for judgment against Defendants West County BMW, Chance Earnest and Orson Guyton in an amount in excess of the jurisdictional limit of this Court, for statutory damages including treble damages provided therein under 18 U.S.C. §1964, for her attorney's fees and expenses incurred in prosecution of this cause, for her costs expended herein and for such other and further relief as this Court deems just and proper.

STATE OF MISSOURI)
) SS
COUNTY OF ST. CHARLES)

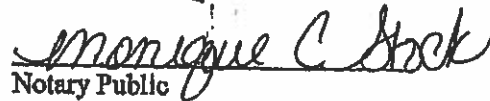
I, Sarah Kendrick, and being first duly sworn upon my oath, state that I have read the Petition for Damages, and that the facts contained therein are true and correct to the best of my knowledge, information and belief, and that I sign the same as my free act and deed.



Sarah Kendrick, Plaintiff

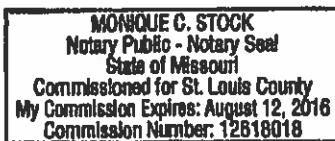
STATE OF MISSOURI)
) SS
COUNTY OF ST. CHARLES)

Subscribed and sworn to before me this 5th day of December, 2014, a Notary Public in and for said state and county, Sarah Kendrick personally appeared before me, known to me to be the person who executed the foregoing, and acknowledged to me that she executed the same for the purposes therein stated; that she executed the same as her free act and deed; and that the facts contained therein are true and correct to the best of her knowledge, information and belief.

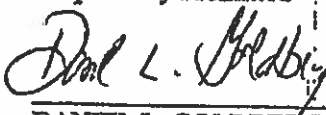


Notary Public

My Commission Expires:



Respectfully submitted

By: 

DANIEL L. GOLDBERG, #36982
228 N. Main
St. Charles, MO 63301
(636) 949-0010
(636) 949-8277 fax
dgoldberg@228northmain.com

VEHICLE BUYER'S ORDER

14SL-CC04270

West County BMW

14417 Manchester Road

Manchester, MO 63011 • (636) 227-5454

E-mail: SARAH.KENDRICK@YMAIL.COM

Purchaser's Name SARAH L KENDRICK

Street Address 1603 VILLA MARIE

City ST. LOUIS

State MO.

Zip 63042

Res. Phone

Bus. Phone

Cell Phone (314) 413-3805

Date 02-26-13

PLEASE ENTER MY ORDER FOR THE FOLLOWING

☒ NEW OR ☐ USED - ☐ CAR OR ☒ TRUCK

YEAR 2013	MAKE BMW	MODEL X5	TYPE
COLOR BLACK	TRIM BLK	SERIAL NO. 5UXZV4C5XDGE05765	
STOCK NO. 14592	SALESMAN CHANCE	TO BE DELIVERED ON OR ABOUT 20	

I hereby certify that the odometer on the above described motor vehicle:

1. Was not altered, set back or disconnected while I was owner of said vehicle; and
2. To the best of my knowledge and belief said odometer was not altered, set back or disconnected prior to the time I became owner of said vehicle; and
3. That the odometer mileage indicated on the vehicle described above is 13 miles and is as indicated below:

ODOMETER READING

Check one: ☒ Actual mileage ☐ mileage reading not actual☐ Total cumulative miles (if over 100,000) (warning, odometer discrepancy)

LEASE INFORMATION

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY
DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

DESCRIPTION OF TRADE IN

YEAR	MAKE	MODEL
TYPE	SERIAL NO.	
COLOR	TRIM	MILES

Check one: ☐ actual mileage ☐ mileage reading not actual

PURCHASER, BY HIS EXECUTION OF THIS DOCUMENT, ACKNOWLEDGES THAT HE HAS BEEN MADE AWARE OF ALL PRIOR DAMAGES AND/OR MECHANICAL PROBLEMS RELATING TO THE VEHICLE BEING PURCHASED HEREUNDER. TO THE EXTENT DEALER IS AWARE OF ANY SUCH PRIOR DAMAGE AND/OR MECHANICAL PROBLEMS; AND FURTHER, IN THE EVENT ANY SUCH DAMAGE OR MECHANICAL PROBLEMS ARE DISCOVERED AFTER PURCHASE, TAKES DELIVERY OF THE VEHICLE, PURCHASER ACKNOWLEDGES THAT DEALER MADE ALL RESPONSIBLE EFFORTS TO DETERMINE IF SUCH DAMAGE OR MECHANICAL PROBLEMS EXISTED PRIOR TO THE PURCHASE, AND FURTHER, RELEASES DEALER FROM ANY AND ALL LIABILITY RELATING THERETO.

PURCHASER AGREES TO PROVIDE WEST COUNTY BMW WITH FREE AND CLEAR TITLE AND THAT ALL SALES TAX HAS BEEN PAID.

AN ADMINISTRATION FEE IS NOT AN OFFICIAL FEE AND IS NOT REQUIRED BY LAW BUT MAY BE CHARGED BY A DEALER. THIS ADMINISTRATIVE FEE MAY RESULT IN PROFIT TO THE DEALER. NO PORTION OF THIS ADMINISTRATIVE FEE IS FOR THE DRAFTING, PREPARATION, OR COMPLETION OF DOCUMENTS OR THE PROVIDING OF LEGAL ADVICE. THIS NOTICE IS REQUIRED BY LAW.

BASE PRICE OF VEHICLE	47,500	00
DESTINATION AND HANDLING CHARGES	895	00
FINAL GET READY	395	00
CONV. PKG	AUTOMATIC TRANSMISSION	2100 00
RNR TAILGATE	METALLIC PAINT	500 00
HID LTS	A.S.T. LIMITED SLIP DIFFERENTIAL	500 00
PDC	LEATHER INTERIOR	750 00
NAVIGATION	GAS GUZZLER TAX	1900 00
SUBTOTAL PRICE 54,540 00		
NO TRADE DISCOUNT 2,726 00		
CASH PRICE 51,814 00		
LUXURY TAX		
ADMINISTRATION FEE 150 00		
EXTENDED SERVICE POLICY		
1. TOTAL CASH PRICE DELIVERED		
2. CASH	DEPOSIT ON ORDER	1000 00
	DUE ON DELIVERY	
3. TRADE IN	ALLOWANCE AS APPRAISED	
	LESS BALANCE OWING TO	
4. TOTAL DOWN PAYMENT (2+3)		
5. UNPAID BALANCE OF CASH PRICE (1-4)		
6. OTHER CHARGES	INSURANCE	
7. UNPAID BALANCE (AMOUNT FINANCED) (5+6)		
8. FINANCE CHARGE		
9. TOTAL OF PAYMENTS (7+8)		
10. DEFERRED PAYMENT PRICE (1+6+8)		
11. ANNUAL PERCENTAGE RATE %		

Purchaser agrees that this Order includes all of the terms and conditions on both the face and reverse side hereof, that this Order cancels and supersedes any prior agreement and as of the date hereof comprises the complete and exclusive statement of the terms of the agreement relating to the subject matters covered hereby, and that THIS ORDER SHALL NOT BECOME BINDING UNTIL ACCEPTED BY DEALER OR HIS AUTHORIZED REPRESENTATIVE AND IN THE EVENT OF A TIME SALE, DEALER SHALL NOT BE OBLIGATED TO SELL UNTIL APPROVAL OF THE TERMS HEREOF IS GIVEN BY A BANK OR FINANCE COMPANY WILLING TO PURCHASE A RETAIL INSTALLMENT CONTRACT BETWEEN THE PARTIES HERETO BASED ON SUCH TERMS. Purchaser by his execution of this Order certifies that he is of legal age or older and acknowledges that he has read its terms and conditions and has received a true copy of this Order.

PURCHASER'S SIGNATURE:

EXHIBIT

1

DATE: 2.12.13

ACCEPTED BY:

DEALER OR HIS AUTHORIZED REPRESENTATIVE

14SL-CC04270

MOTOR VEHICLE BUREAU
P O BOX 1008
JEFFERSON CITY MO 65105-1008



Missouri
DEPARTMENT OF REVENUE

Telephone: (573) 751-3535
E-mail: mvnotice@dor.mo.gov

KENDRICK SARAH
24 WILDERNESS LN
DEFIANCE MO 63341

November 17, 2014

RE: 2013 BMW
IDENTIFICATION NUMBER: 5UXZV4C5XD0E05765
REFERENCE NUMBER: 8022006D

Dear Sir or Madam:

The Missouri Department of Revenue records show there is a balance due on your Motor Vehicle Sales Tax of \$4,662.74. The following is a breakdown of the amount due:

State Sales Tax:	\$	2,189.14
Local Sales Tax:		2,273.60
*Title Penalty:		200.00
Title Application Fee:		0.00
Processing Fee:		0.00
 Total Due:	\$	 4,662.74
Amount Paid:	-	0.00
 Balance Due:	\$	 4,662.74

*The maximum penalty is \$200

Please send your check or money order of \$4,662.74 to the Missouri Department of Revenue within 15 days to the address above.

If you pay by check, you authorize the Department to process the check electronically. Any returned check may be presented again electronically.

If you require additional information or assistance, please contact the Motor Vehicle Bureau at Post Office Box 1008, Jefferson City, Missouri 65105-1008 or by telephone at (573) 751-3535 during the hours of 8:00 a.m. to 5:00 p.m.

MOTOR VEHICLE BUREAU

MVB649
201432100300186



Notice of Sale

Control No: 8022006D

Purchaser Name: Kendrick Sarah

Address: 1603 Villa Marie

City/St/Zip: St Louis, MO 63042

Make: BMW Year: 2013

VIN: 5UXZV4C5XD0E05765

Purchase Date: 03/07/2013

Net Price: \$51,814.00

Dealer No: D0503

Date Received: 03/12/2013

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Electronically Filed - St Louis County - December 15, 2014 - 12:48 PM

EAST WEST BANK
CASHIER'S CHECK

DATE March 05, 2013

AMOUNT PAYABLE *****\$51,964.00

PAY TO THE ORDER OF
FIFTY ONE THOUSAND NINE HUNDRED SIXTY FOUR DOLLARS AND ZERO CENTS
Suntrup West County BMW
2013 BMW X3
VIN# EQ5575

Re: Sarah Kendrick

VOID AFTER 90 DAYS

821007440

821007440 32207038 4593400015

THE ORIGINAL DOCUMENT HAS A REFLECTIVE WATERMARK AND THERMO SENSITIVE INK ON THE BACK. HOLD AT AN ANGLE TO VIEW OR ANDE TO YELLOW TONCH

EXHIBIT
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